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Women's vision  
for reform:  
an agenda  
for corporate  
accountability  
in Australia's  
mining sector

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# Credits and acknowledgements

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# Executive Summary

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Mining can undermine the human rights of the women, men and children in the communities surrounding mining operations and also cause significant environmental pollution. The mining and burning of coal causes additional climate-related impacts. Mining also brings about social and structural change that disrupts community life. While all members of a community are potentially impacted by mining, it is women who bear the brunt. Mining can negatively affect women's access to land, their livelihoods and food security, and their health and safety. Mining can increase women's burden of unpaid care work, and can undermine women's power and authority.

This report identifies priority issues relevant to the mining sector that ActionAid Australia believes should be subject to Australian regulation and policy. These priority issues are based on women's experiences of mining, and demands for reform made by women's rights organisations, including Women Affected by Mining United in Action (WAMUA) and WoMin, which are ActionAid partners in South Africa. The report brings a distinctly gendered approach to the broader issue of mining sector reform and corporate accountability.

Women's rights organisations have a clear vision for mining sector reform. The demands being made by women's rights organisations of the governments of the countries where mining companies are headquartered, including Australia, include the following:

1. **Better access to remedy and justice for harms experienced by women and their communities.**
2. **Support for the development of an international legally binding treaty on business and human rights to address corporate abuse.**
3. **The development of a legal requirement that mining companies conduct human rights due diligence to help prevent company involvement in human rights violations.**
4. **Better access to information including on the payments made to host governments.**
5. **Cessation of government funding and support for fossil fuel projects.**

This report compares Australia to other similar countries (namely, Canada, Japan, the UK and the US) on how it regulates the overseas operations of its mining companies, and key related issues.

Based on ActionAid Australia's assessment, the Australian Government has failed to meet its international human rights obligations and its regulatory and policy approaches to corporate accountability in the mining sector lag far behind leading practice. In the case of access to remedy and revenue transparency, Australia should look to Canada and the UK as examples of leading practice.

Based on our findings ActionAid Australia recommends that the Australian Government:

1. **Provide better access to remedy for women and their communities impacted by the operation of Australian mining companies overseas through the establishment of a function similar to the proposed Canadian Ombudsperson for Responsible Enterprise. This function should address the specific barriers that women face accessing remedy, and have the power to investigate both the systemic impacts of mining on women's rights and individual cases of abuse.**
2. **Support the development of an international legally binding treaty on business and human rights, and actively engage in the treaty development process including to ensure that a future treaty addresses the specific impact of corporate violations on women.**
3. **Develop legislation that requires Australian mining companies operating overseas to conduct human rights due diligence. Due diligence should be gender sensitive and aimed at preventing adverse human rights impacts on women and their communities.**
4. **Develop legislation that requires Australian mining companies to report, on a project-by-project and country-by-country basis, the payments made to the governments of the countries where they operate, consistent with Canadian and UK requirements.**
5. **Cease public funding for fossil fuel projects, including the alteration of Efic's mandate to explicitly prohibit support for fossil fuel projects, consistent with government commitments to limit global warming to no more than 1.5°C as agreed under the Paris climate agreement.**

# Introduction

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## About ActionAid Australia

ActionAid is a global women's rights organisation working to achieve social justice, gender equality and poverty eradication in more than 45 countries. ActionAid works to address a broad range of socio-economic, political and environmental issues that have a particular impact on women. ActionAid Australia focuses on economic and climate justice for women and their rights in emergencies, and is currently delivering a number of projects focused on women's economic empowerment, climate change adaptation and access to justice. This includes work with women smallholder farmers, survivors of sexual and gender-based violence in conflict, and women from mining and crisis-affected communities.

ActionAid works with communities in Africa that are impacted by mining including coal mining and power generation, and in particular with women who bear the brunt of these impacts. ActionAid also works with women who are facing the worst impacts of climate change and who are leading community adaptation, and disaster preparedness and response, in a number of countries around the world, including Kenya, Somaliland, Uganda, Cambodia, Nepal, Vanuatu and the Philippines.

The extractive industry is an area of focus for the Australian government in driving private sector engagement, specifically in the African continent. ActionAid Australia's engagement in this area is designed to ensure that Australia is making a positive contribution to women's empowerment and gender equality. Our experience working with mining-affected communities in Africa has highlighted significant potential for extractive industries to undermine women's rights where no adequate safeguards and regulations are in place. The industry also contributes significantly to climate change and environmental degradation, which could see Australia pushing global emissions beyond targets consistent with the Paris agreement. ActionAid Australia's aim is to ensure that Australian government policy and corporate practice is making a positive contribution to supporting people to rise out of poverty and not further deepen inequalities by fuelling rights violations and climate change.

## About this report

Since the beginning of 2004, more than 380 people have died in mining accidents or in off-site skirmishes connected to publicly-traded Australian mining companies in 13 countries across Africa.<sup>1</sup> Australian mining companies are accused of negligence, unfair dismissal, violence and environmental law-breaking across Africa,<sup>2</sup> and elsewhere around the world. Clearly there is a need for better regulation of Australian mining activity overseas.

This report identifies priority issues that ActionAid Australia believes should be subject to robust Australian regulation and policy. Given that women are disproportionately affected by mining, these priority issues are based on women's experiences of mining, and demands for reform made by women's rights organisations. The report brings a distinctly gendered approach to the broader issue of mining sector reform and corporate accountability.

Based on these priority issues for women's rights, this report compares Australia to other similar countries with regard to how it regulates the overseas operations of its mining companies. The report also compares Australia to other similar countries on government policy on key issues relevant to the overseas operations of the mining sector. Government policy here is defined broadly and includes what Government representatives say (or don't say) on particular issues, funding priorities, Ministerial directions, government action (or inaction) as well as regulatory measures. The report does not consider broader trade policy, such as Australian support for trade agreements and bilateral investment treaties which often favour corporate interests over community interests, despite their relevance to the practices of the mining sector.

The report concludes with recommendations to the Australian Government. These recommendations are based in part on how Australia compares with other nations, especially those whose regulatory or policy approach is considered by ActionAid Australia to be leading practice.

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1 International Consortium of Investigative Journalists, Fatal Extraction: Australian mining's damaging push into Africa, 2015 <https://www.icij.org/investigations/fatal-extraction/>

2 International Consortium of Investigative Journalists, Fatal Extraction: Australian mining's damaging push into Africa, 2015 <https://www.icij.org/investigations/fatal-extraction/>

# Context

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## Impacts of mining on women

As noted in the introduction, this report aims to bring a distinctly gendered approach to the broader issue of mining sector reform and corporate accountability. Before identifying the priority issues that should be subject to Australian regulation and policy, an overview of how mining impacts on women is provided. This provides important background to help understand why women's rights organisations and ActionAid Australia are making the demands for reform contained within this report.

There is growing evidence of the negative impacts of mining that need to be adequately managed if mining is to cause no harm. Mining can undermine the human rights of the women, men and children in the communities surrounding mining operations and cause significant environmental pollution. The mining and burning of coal causes additional climate-related impacts. While all members of a community are potentially impacted by mining, it is women who bear the brunt. The reasons for this are two-fold.

Persistent and structural gender inequality within the extractive industries, and systemic discrimination against women, undermines women's rights.<sup>3</sup> The different roles and responsibilities of women and men in the household and community, and their differentiated access to and control of resources, influences how women and men experience mining. Gender inequality and discrimination result in women's exclusion from consultation and decision-making processes. This occurs because consultation processes are not designed to support women's participation and do not acknowledge these structural barriers or actively seek to improve women's limited access to resources and information, their lack of political voice, and the unequal relations in households and communities that constrain women's engagement in public life.<sup>4</sup>

A 2015 review of publicly available mining (and oil and gas) company commitments to gender issues shows that very few companies make any public commitment to issues of gender or the importance of engaging with women,<sup>5</sup> making it more likely the companies will fail to identify and work

with women to address these structural barriers. Women's exclusion from decision-making processes exacerbates the gendered impacts of mining because their experiences and perspectives are not always heard. It is important to emphasise that in ActionAid's experience while all women experience the discrimination and marginalisation described above, some women experience this more keenly than others. Depending on the context, women with a disability, women living with HIV, young women or women who are excluded because of their ethnicity, caste, sexuality or religion may be more adversely affected.

The following provides a snapshot of how mining impacts on women. This snapshot focuses on the impact of mining on women's access to land and associated impacts on their livelihoods and food security, health and safety, the burden of unpaid care work, and women's power and authority. These impacts often intersect and reinforce each other.

## Land, livelihoods and food security

In many rural communities, it is women not men who are most often responsible for growing food for their family's consumption and for income generation. Yet despite women's central role in agricultural production and the contribution of this to the health and well-being of women, their families and their communities, women's land rights under communal tenure systems<sup>6</sup> are deeply insecure and women often have limited or no decision-making power over the land.<sup>7</sup> Land that is expropriated for mining or whose use for mining has been agreed to by men can no longer be used by women to grow food for their families or to support income generating activities.<sup>8</sup> Further, land that might be offered as part of a formal resettlement package may not support agricultural production to the same extent as the original land. The Benga coal mine (previously operated by Australia's Rio Tinto) in Mozambique and a coal mine in Malawi operated by Malcoal (a subsidiary of Australian company IntraEnergy) are two examples of this.<sup>9</sup>

Loss of access to productive agricultural land can add to women's workloads and cause distress for women.

3 Oxfam International, Position paper on gender justice and the extractive industries, 2017

4 Oxfam International, Position paper on gender justice and the extractive industries, 2017

5 Oxfam International, Community consent index 2015: Oil, gas and mining company public positions on Free, Prior and Informed Consent, 2015

6 The majority of communities impacted by extractives-related land dispossessions in the Africa region live under communal tenure regimes (WoMin, Land and food security undermined: impacts on peasant women in Women, gender and extractivism in Africa series)

7 WoMin, Land and food security undermined: impacts on peasant women in Women, gender and extractivism in Africa series

8 see for example, ActionAid South Africa, Living next to the mine: Women's struggles in mining affected communities [http://www.actionaid.org/sites/files/actionaid/living\\_next\\_to\\_the\\_mine\\_womens\\_struggles.pdf](http://www.actionaid.org/sites/files/actionaid/living_next_to_the_mine_womens_struggles.pdf)

9 Oxfam, Mining, resettlement and lost livelihoods: Listening to the Voices of Resettled Communities in Mualadzi, Mozambique, 2015; Human Rights Watch, "They destroyed everything": mining and human rights in Malawi, 2016 <https://www.hrw.org/report/2016/09/27/they-destroyed-everything/mining-and-human-rights-malawi>



**Maria Khumalo (39) fondly remembers how happy she was living with her family on a farm in Mpumalanga province, South Africa. The family had a ten-room house and large field on which they planted crops and raised livestock. All that remains of her home are memories. Her present day reality is starkly different.**

**A few years ago, the Khumalos were given a five-room Reconstruction and Development Programme (RDP) house and promised financial compensation for the relocation. The RDP is a socio-economic policy framework developed and implemented by government to address the crippling levels of poverty and inequalities prevalent across South Africa. To date, after moving away from the lands that their forefathers lived, toiled and died on, the family has still not received the promised compensation.**

**Most families enjoy access to electricity in the RDP houses but the Khumalos are an exception. Maria is convinced that the reason for this is related to her gender, "I'm the only woman and my concerns are not taken seriously."**

**Mine operations in the area have undermined Maria's livelihood by appropriating vast quantities of land formerly used for crop and livestock farming. "My parents left me with a 100 cattle but now I'm only left with two." She now makes a paltry earning selling chicken and uses the money to buy coal and food.**

*ActionAid South Africa, Living next to the mine: Women's struggles in mining affected communities, 2017*

According to women in South Africa and Mozambique: "we get upset when our children say 'I want something to eat – I'm hungry'. As women, we have always ploughed the land, but now we cannot"<sup>10</sup> and "on my land I can only produce beans, it's not enough. We cannot eat beans every day".<sup>11</sup>

Water is of course critically important for food security and agricultural-based livelihoods. Here too mining can have devastating impacts because of mining-related water pollution or 'water grabbing'. To take one example, communities around the Tendele coal mine in South Africa can no longer rely on the uMfolozi River to supply water for their crops or livestock, and family needs.<sup>12</sup> The mining company has been pumping water from the river for many years and this, combined with drought, has caused the river to run dry. The company had also fenced off water sources

used by the community. The water crisis has exacerbated the domestic work burden for women who now spend four to six hours each day fetching water. Women are also largely excluded from decision-making and oversight of the municipal water supply service which is designed to address the water crisis experienced by communities. Instead men dominate spaces of influence and water supply has become a source of local patronage.<sup>13</sup>

Other sources of pollution from mining activity can also impact on food production. In eastern Guatemala for example, where women are also responsible for providing food for the household, women attribute a loss of land productivity and food availability to airborne pollution from the Fenix mine.<sup>14</sup> Pollution of water from mining (and oil and gas extraction) can also lower agricultural yields and result in livestock-related losses in herding communities.<sup>15</sup>

10 WoMin, Land and food security undermined: impacts on peasant women in Women, gender and extractivism in Africa series

11 Oxfam, Mining, resettlement and lost livelihoods: Listening to the Voices of Resettled Communities in Mualadzi, Mozambique, 2015

12 WoMin, 'No longer a life worth living' Mining impacted women speak through participatory action research in the Somkhele & Fuleni communities, Northern Kwazulu Natal, South Africa, 2017

13 WoMin, 'No longer a life worth living' Mining impacted women speak through participatory action research in the Somkhele & Fuleni communities, Northern Kwazulu Natal, South Africa, 2017

14 K Deonandan et al, Indigenous women's anti-mining activism: a gendered analysis of the El Estor struggle in Guatemala in Gender and Development, Volume 25, Number 3, 2017

15 see for example ActionAid South Africa, Living next to the mine: Women's struggles in mining affected communities and WoMin, Land and food security undermined: impacts on peasant women in Women, gender and extractivism in Africa series



Silobela Township was among the very few townships in Carolina, South Africa where residents enjoyed access to clean running water that was piped to their homes. The introduction of mining in the area changed the landscape and realities of communities dramatically, fundamentally infringing their constitutional rights. Between 2010 and 2011 residents began observing a strange occurrence - the tapped water was changing to an unusual brown colour, and people regularly complained about stomach problems. When people went to the clinic for medical check-ups, they were advised to stop drinking the water. Zodwa Mabaso, a concerned resident, reveals that their water is contaminated and that “we don’t have money to buy water because we are unemployed”.

Community members are now forced to walk long distances to collect water from schools in the area that have not been affected by contamination. This sometimes leads to the disruption of classes since there are crowds of people waiting to collect water. Collecting containers of water is a backbreaking and time consuming task, which is often carried out by women and young girls. “We are tired for most of the day. Water

is the heaviest thing that women must carry,” exclaims Mabaso.

Those people that do have some money to spare simply cannot afford to buy enough for cooking and cleaning. Mabaso says that many women in the community have discreetly told her that they have developed rashes around their genital area which they believe is attributable to the contaminated water. Most women are anxious to get treatment or disclose their condition to their husbands for fear that their husbands will accuse them of being unfaithful.

*ActionAid South Africa, Living next to the mine: Women’s struggles in mining affected communities, 2017*

## Women's health and safety

A large population of men working on mine sites and with disposable incomes, and male mine worker migratory patterns (often fostered by labour-brokering practices) can generate demand for sex workers and associated trafficking of women and girls in some contexts.<sup>16</sup> In Southern Africa, the labour migration system also creates a mechanism to spread HIV and tuberculosis (TB) and increases the risks to the families and home communities of mine workers.<sup>17</sup> Women in rural areas became exposed to sexually-transmitted diseases without the knowledge or power to address the gender inequalities that heightened their risk.<sup>18</sup>

Research from Mongolia, where mining is a relatively new industry, highlights other threats to women's health and safety. For example, women reported they did not feel safe walking alone at night for fear that car-loads of male mine workers would stop and ask if they are sex workers or if they wanted to go for a 'drive'. This sort of behaviour was reported to impact on women's freedom to move and contributed towards women feeling insecure in their own community.<sup>19</sup> Similar impacts are reported elsewhere: in Nunavut Territory, Canada, mining activity has been attributed to increased substance abuse which has had implications for gender-based and sexualised violence against young women and girls.<sup>20</sup>

Women, including those actively opposing mining projects, can also be subjected to violence (including sexual violence) from state or company security forces or from mining proponents in their own communities. The Fenix mine in Guatemala<sup>21</sup> (discussed above) and Porgera gold mine in Papua New Guinea<sup>22</sup> are just two examples of this. In some cases the level of sexual violence against women is systematic. In the case of the Porgera gold mine, individual examples of sexual abuse of women by mine staff have been

described as part of a broader pattern of abuse.<sup>23</sup>

Local women have accused mine security personnel of a decades-long campaign of gross violations waged against women in the community, including systematic sexual violence and brutal gang rape.<sup>24</sup>

## Women's unpaid care work

Each year, mining is estimated to be attributable for about 760,000 cases of TB in sub-Saharan Africa and mining is also found to be significantly linked to the spread of HIV at a population level in Africa.<sup>25</sup> Further, the prevalence of silicosis – a degenerative lung disease arising from exposure to and inhalation of silica dust – in South African goldminers is estimated at between 22% and 36%.<sup>26</sup> Sick workers are often repatriated to their home villages to be taken care of by their mothers, wives, sisters or other female relatives.<sup>27</sup> In such cases, the mining industry has effectively displaced its responsibility for taking care of sick mine workers onto women. The care provided by these women comes at considerable personal and financial expense as they are often required to withdraw from formal and informal work, or, in the case of girls, leave school.<sup>28</sup> Women's ability to engage socially in other activities is also limited.

In southern Africa, the coal industry has had major impacts on women's unpaid labour due to the significant pollution it causes and the effect this has on health and natural resources.<sup>29</sup> As women are generally responsible for tasks such as collecting water, subsistence farming, and healthcare for family members, this has disproportionately impacted women in mining-affected communities.

16 S Steele, Human trafficking, labor brokering, and mining in southern Africa: responding to a decentralized and hidden public health disaster in *International Journal of Health Services*, 2013;43(4):665-80

17 D Stuckler et al, 'Dying for gold': the effects of mineral mining on HIV, tuberculosis, silicosis and occupational diseases in southern Africa in *International Journal of Health Services*, 2013; 43(4): 639-649, see also ActionAid South Africa, *Living next to the mine: Women's struggles in mining affected communities*

18 D Stuckler et al, 'Dying for gold': the effects of mineral mining on HIV, tuberculosis, silicosis and occupational diseases in southern Africa in *International Journal of Health Services*, 2013; 43(4): 639-649

19 M4DC/Centre for Social Responsibility in Mining, *Mapping gender based violence and mining infrastructure in Mongolian mining communities*, 2014

20 E Nightingale et al, *The effects of resource extraction on Inuit women and families: evidence from Canada in Gender and Development*, Volume 25, Number 3, 2017

21 Nobel Women's Initiative, *Hudbay minerals faces Canadian trial for human rights abuses in Guatemala*, 2013 <https://nobelwomensinitiative.org/hudbay-minerals-faces-canadian-trial-for-human-rights-abuses-in-guatemala/>

22 MiningWatch Canada, *Barrick settlement on rapes and killings in Papua New Guinea proof that victims need independent legal counsel*, 2015 <https://miningwatch.ca/news/2015/4/3/barrick-settlement-rapes-and-killings-papua-new-guinea-proof-victims-need-independent>

23 Human Rights Watch, *Gold's costly divide: human rights impacts of Papua New Guinea's Porgera gold mine*, 2010.

24 Earth Rights International and Mining Watch Canada, *Report to the UN Committee on the Elimination of Discrimination Against Women*, 2016

25 Mine workers are at a higher risk of contracting TB due to prolonged exposure to silica dust, poor living conditions, and high HIV prevalence in mining communities (The World Bank, *The Southern Africa TB in the mining sector initiative*, <http://www.worldbank.org/en/programs/the-southern-africa-tb-in-the-mining-sector-initiative>); D Stuckler et al, 'Dying for gold': the effects of mineral mining on HIV, tuberculosis, silicosis and occupational diseases in southern Africa in *International Journal of Health Services*, 2013; 43(4): 639-649

26 Treatment Action Campaign, *TAC/Sonke background on amicus brief application in historica gold mining lawsuit*, 2015, <https://tac.org.za/news/tacsonke-background-on-amicus-application-in-historic-gold-mining-lawsuit/>

27 Womin, *Women's unseen contribution to the extractive industries: Their unpaid labour in Women gender and extractivism in Africa series*

28 Treatment Action Campaign, *TAC/Sonke background on amicus brief application in historica gold mining lawsuit*, 2015, <https://tac.org.za/news/tacsonke-background-on-amicus-application-in-historic-gold-mining-lawsuit/>

29 ActionAid Australia, *Fuelling injustice, Women's rights and Australian coal mining in Africa*

## Women's marginalisation and loss of power and authority

Mining can contribute to women's marginalisation in community decision-making processes that lead to a loss of women's power and authority. Often it is men, not women, who negotiate the agreements with mining companies on use of land, compensation or benefit sharing even where women have traditional power and authority. In Bougainville, home of the Rio Tinto/Bougainville Copper Limited Panguna mine, colonial administrators and foreign corporations imposed their own gendered ideas about property and decision-making and approached male leaders to negotiate access to the mine site, disrupting matrilineal systems.<sup>30</sup> Negotiations were mostly held away from the village, in environments and in ways that were unfamiliar to women who generally do not feel comfortable negotiating outside of the community context.<sup>31</sup> While the situation described here occurred many decades ago – the Panguna mine began operating in the early 1970s – this still happens today.<sup>32</sup>

Examples of more overt attempts to marginalise women also exist. Australian company Mineral Resource Commodities' (MRC) attempts to develop an ilmenite mine (a source of titanium) in South Africa's Wild Coast has attracted considerable attention including in relation to the death of anti-mining activist Sikhosphi "Bazooka" Rhadebe in 2016.<sup>33</sup> Less reported are attempts to undermine the authority of local women leaders. In an apparent effort to suppress opposition to mining, the pro-mining chief, Lunga Baleni, dismissed the villagers' local headwoman and anti-mining advocate, Duduzile Baleni, something that he is not entitled to do according to reports.<sup>34</sup> Chief Lunga Baleni had been made a director of Transworld Energy and Minerals (MRC's South African subsidiary) and Xolobeni Empowerment Company (the local partner).<sup>35</sup>

Furthermore, when water becomes scarce because of pollution, men often take over what is traditionally regarded as a woman's responsibility, as occurred in the case of the Panguna mine in Bougainville. Some men have placed locks

on their family's water tanks and the distribution of water then becomes a source of power for men,<sup>36</sup> a situation that has some parallels to the situation near the Tendele coal mine in South Africa described above.

## Climate change

Finally, climate change impacts women in particular ways that are highly gendered. This is relevant to this report given the link between the extraction of fossil fuels, including coal, and climate change. Extreme weather events exacerbated by climate change – including drought, flood and cyclones – can lead directly to humanitarian disasters and emergencies. Emergencies disproportionately impact on women and girls who are more likely to be killed during disasters and who also experience increased levels of violence in conflict and times of disaster.<sup>37</sup>

These extreme weather events can also disrupt the supply of water to households and disrupt sewage facilities, leading to clean water shortages, water pollution or both. When clean water is scarce, women are inclined to save water for household use rather than for personal needs.<sup>38</sup> As noted above, women may also have to work harder to collect the water needed for their households. Women's unpaid care work will also increase as it is women more so than men who will be tasked with caring for family members affected by climate-related diseases. Women are likely to bear the brunt of health problems caused by 'urban heat island' effects, and increases in vector-borne diseases like malaria, due to changes in temperature and rainfall patterns, and shortages of clean water.<sup>39</sup>

Rising temperatures and drought affect women's access to food – due to crop failure and escalation in food prices – and their food consumption. Undernutrition is already a major problem for women in some low-income countries due to gender bias in the allocation of food within the household, which extreme climate events would exacerbate.<sup>40</sup> Any dramatic and unplanned change to the environment will present practical challenges to how people make

30 Helen Hakena, Peter Ninnis and Bert Jenkins (editors) *NGO's and post-conflict recovery: the Leitana Nehan Women's Development Agency, Bougainville* (Asia Pacific Press ANU E Press: Canberra, 2006)

31 Helen Hakena and Kate Lappin, *Towards a just and equitable economy, and a gender equal society*, Jubilee Australia Research Centre, forthcoming

32 see for example the case study on the Lihir Mine in Papua New Guinea (operated by Australia's Newcrest Mining) (Centre for Social Responsibility in Mining, *Mining and local-level development: Examining the gender dimensions of agreements between companies and communities*, 2014) and the experience of women in Malawi impacted by Australian company Malco's operations (Human Rights Watch, "They destroyed everything": mining and human rights in Malawi, 2016)

33 The Guardian, *Australian mining company denies role in murder of South African activist*, 2016, <https://www.theguardian.com/environment/2016/mar/25/australian-mining-company-denies-role-in-of-south-african-activist>

34 The Guardian, *Murder in Pondoland: how a proposed mine brought conflict to South Africa*, 2017, <https://www.theguardian.com/environment/2017/mar/27/murder-pondoland-how-proposed-mine-brought-conflict-south-africa-activist-sikhosphi-rhadebe>

35 The Guardian, *Murder in Pondoland: how a proposed mine brought conflict to South Africa*, 2017

36 Helen Hakena and Kate Lappin, *Towards a just and equitable economy, and a gender equal society*, Jubilee Australia Research Centre, forthcoming

37 ActionAid International, *On the frontline: Catalysing women's leadership in humanitarian action*, 2016

38 Hwei Mian Lim, *Climate change exacerbates gender inequality, putting women's health at risk*, 2017, <https://www.openglobalrights.org/climate-change-exacerbates-gender-inequality-putting-womens-health-at-risk/>

39 G Terry, *No climate justice without gender justice: an overview of the issues in Gender & Development*, Volume 17 Issue 1, 2009

40 Hwei Mian Lim, *Climate change exacerbates gender inequality, putting women's health at risk*, 2017 and ActionAid, *Hotter planet, humanitarian crisis: El Nino, the "new normal" and the need for climate justice*, 2016

their livelihoods, and this in turn will challenge or reaffirm women's and men's roles and power in their families and communities.<sup>41</sup> Rural women from poor countries are particularly vulnerable to climate change because they are often dependent on natural resources such as land and water for their livelihoods and do most of the agricultural work.<sup>42</sup> In the face of crop failure, women may look to alternative sources of income such as casual labour, which is low paid and can be highly exploitative or associated with sexual violence.<sup>43</sup>

## Women's alternatives and vision for mining sector reform

The snapshot above is grim yet it also drives women's activism. Across the globe women's rights organisations are resisting mining, building alternatives and demanding reform of a sector that undermines their rights, and marginalises their voice and authority. Women's activism is directed internally within the community, wherein women challenge the chiefs and patriarchal power structures that exclude them from decision-making; at the mining sector itself; the governments who host mining activities; and, increasingly, the governments of the countries where large multinational mining corporations are headquartered.

Women's rights organisations have a clear vision for mining sector reform. The demands being made by women's rights organisations are of course many and varied but those directed at the governments of the countries where mining companies are headquartered, including Australia, include common calls for reform. These include:

### 1. Better access to remedy and justice for harms experienced by women and their communities

As part of their duty to protect against business-related human rights abuses, governments must ensure that victims of human rights abuse have access to an effective remedy.<sup>44</sup> Remedy can take the form of an apology, compensation, punitive sanctions (such as fines) or guarantees that the harms experienced will not be repeated. Unless women

have access to effective remedy, the abuses of women's rights – including those described in the section above – may go unscrutinised and the companies involved will continue to act with impunity.<sup>45</sup> Important too is ensuring that the structural barriers to accessing remedy mechanisms, and the power dynamics that exist between states, companies and communities (especially women), are identified and addressed.<sup>46</sup>

While both judicial and non-judicial processes can provide a form of remedy this report focuses on the provisions of effective non-judicial remedy. This includes consideration of the effectiveness or otherwise of the National Contacts Points (NCP) – a non-judicial remedy process – established by the OECD Guidelines for Multinational Enterprises. The Guidelines apply extraterritorially to all business activities (not just mining) and include specific human rights provisions. More complaints have been brought to the attention of NCPs in relation to mining projects (followed by oil and gas projects) than projects in any other sector and as such the performance of NCPs highly relevant.

### 2. Support for the development of an international legally binding treaty on business and human rights to address corporate abuse

An international legally binding treaty on business and human rights has the potential to both prevent corporate-related human rights abuses, and improve access to remedy for victims of abuse by, among other things, removing barriers to accountability and remedies. For women's rights organisations, a treaty might also address the specific impact of corporate abuse on women,<sup>47</sup> including those described in the section above. A legally binding treaty could explicitly integrate a gender perspective by requiring, for example, mandatory gender and human rights impact assessments of business operations; gender-sensitive justice and remedy mechanisms; and ensuring respect, protection and an enabling environment for women human rights defenders.<sup>48</sup> At the 26th session of the Human Rights Council (26 June 2014), Resolution 26/9 was adopted and work has since commenced to develop a legally binding treaty to regulate the activities of transnational corporations and other business enterprises. What governments are doing now to support the development of a legally binding treaty is critical to ensuring

41 C Sweetman, Introduction, in *Gender & Development*, Volume 17 Issue 1, 2009

42 G Terry, No climate justice without gender justice: an overview of the issues in *Gender & Development*, Volume 17 Issue 1, 2009

43 ActionAid, Hotter planet, humanitarian crisis: El Nino, the "new normal" and the need for climate justice, 2016

44 UN Guiding Principles on Business and Human Rights Implementing the Protect, Respect and Remedy Framework, 2011

45 Mesoamerican Initiative of Women Human Rights Defenders, Violence against women human rights defenders in MesoAmerica 2102-2014

46 International Women's Rights Action Watch Asia Pacific, Submission to the UN Working Group on the issue of human rights and transnational corporations and other business enterprises on Access to Remedy, 2017 <https://www.iwraw-ap.org/wp-content/uploads/2018/04/Joint-Submission-on-Access-to-Remedy-15-June-2017.pdf>

47 Development Alternatives with Women for a New Era, Joint Statement at HRC 37: Support the #BindingTreaty against corporate abuse, 2018 <http://www.dawnnet.org/feminist-resources/article/joint-statement-hrc-37-support-bindingtreaty-against-corporate-abuse>

48 AWID, A gender perspective on the UN binding treaty on transnational corporations, 2017 <https://www.awid.org/news-and-analysis/gender-perspective-un-binding-treaty-transnational-corporations>

progress is made towards its agreement and ratification.

### **3. The development of a legal requirement that mining companies conduct human rights due diligence to help prevent company involvement in human rights violations**

A fundamental means by which businesses can ensure respect for human rights is through human rights due diligence processes. The UN Guiding Principles on Business and Human Rights makes clear that human rights due diligence should be used to identify, prevent, mitigate and account for how companies address their adverse human rights impacts. Further, human rights due diligence should assess the actual and potential human rights impacts of a company's activities; lead to the company then acting on these findings; and cover impacts that the company may cause or contribute to through its own activities and those which may be directly linked to its operations through its business relationships.<sup>49</sup> Governments have a positive duty to adopt a legal framework requiring businesses to exercise human rights due diligence,<sup>50</sup> and such legislation should apply extraterritorially. If conducted in a gender-sensitive manner, and with the rights, interests and needs of women as its focus, human rights due diligence can be used to specifically identify, prevent and mitigate human rights violations affecting women. Usefully, the OECD Due Diligence Guidance for Responsible Business Conducts, published in May 2018, provides advice on how business can integrate gender into its due diligence.<sup>51</sup>

### **4. Better access to information including information on the payments made to host governments**

Women's rights organisations, along with other organisations from civil society, have long campaigned for greater revenue transparency. When information about the amount of revenue paid by mining companies to host governments is in the public domain, judgements about the fairness of tax and royalty arrangements can be made. Women's rights organisations can also use this information to hold governments accountable for the spending of extractive industries revenues. Too often, this information remains secret. The loss of tax revenue that this secrecy enables has

implications for governments' ability to adequately fund public policies aimed at reducing gender gaps and fulfilling women's rights through services and programs that address women's needs and interests, such as women's health and safety, education, unpaid care work, and violence against women and girls.<sup>52</sup> Mandatory revenue reporting (or disclosure) legislation that operates extraterritorially can address this information gap.

### **5. Cessation of government funding and support for fossil fuel projects**

Many governments continue to provide public finance (often via government-backed export credit agencies or development finance institutions) and subsidies (often tax-based) for fossil projects. This is at odds with government commitments to limit global warming to no more than 1.5°C as agreed under the Paris climate agreement and is in sharp contrast to the actions of other institutions that are increasingly divesting from fossil fuel companies and refusing to finance fossil fuel projects.<sup>53</sup> Given the impacts of climate change on women it is not at all surprising that women's rights organisations are demanding that fossil fuels are left in the ground and that governments (and other institutions) no longer finance greenhouse gas emitting extractive industries projects.<sup>54</sup> The comparison below will consider the level of government support (in the form of public finance) for fossil fuel projects.

If addressed by the governments of the countries where mining companies are headquartered such as Australia, these five demands for reform made by women's rights organisations will go some way to addressing the specific concerns of women impacted by mining.

Australia has a clear responsibility to better regulate the overseas operations of Australian mining companies and to address the specific demands listed above – simply relying on companies to 'do the right thing' is not enough as the examples highlighted throughout this report clearly demonstrate. Doing so would enhance Australia's reputation as a good global citizen.

This responsibility stems from Australia's international human rights obligations.<sup>55</sup> Australia is party to the Convention on the Elimination of All Forms of Discrimination against Women

49 UN Guiding Principles on Business and Human Rights Implementing the Protect, Respect and Remedy Framework, 2011

50 UN Committee on Economic, Social and Cultural Right, General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, E/C.12/GC/24, 2017

51 OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018

52 Development Alternatives with Women for a New Era, Illicit financial flows undermining gender justice, 2016

53 see for example 350.org, Top Catholic institutions worth billions divest from fossil fuels as part of the continuing momentum for the global divestment movement, 2018 <https://350.org/press-release/top-catholic-institutions-worth-billions-divest-from-fossil-fuels-as-part-of-the-continuing-momentum-for-the-global-divestment-movement/> and Market Forces, Media release: NAB's coal mining exclusion raises the bar for its competitors, 2017 <https://www.marketforces.org.au/media-release-nabs-coal-mining-exclusion-raises-the-bar-for-its-competitors/>

54 see for example WoMin, Women Building Power Towards Climate and Energy Justice for Women in Africa, 2016 and Gender Action, Broken promises: Gender impacts along the World-Bnka financed West-Africa and Chad-Cameroon pipelines, 2011

55 see for example UN Committee on Economic, Social and Cultural Right, General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, E/C.12/GC/24, 2017

(CEDAW). In its General Comment No. 28, the Committee on the Elimination of Discrimination against Women makes clear that governments must protect women against any act of discrimination and to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise, including national corporations operating extraterritorially.<sup>56</sup>

## The global footprint of the mining sector

This report compares the Australian Government's approach to these policy areas with similar countries: countries that are also home to a significant number of mining companies that operate extraterritorially, and are subject to common human rights and corporate accountability frameworks that cover the areas outlined above.

As Publish What You Pay Australia has noted, Australia has no system to routinely collect, store or make available data relating to Australian extractive activities domestically or abroad.<sup>57</sup> This makes it difficult to determine exactly how many companies are active overseas. Nevertheless the available data show that Australian mining companies have a large global footprint. For example, at least 170 Australian companies are estimated to have been developing or operating over 400 projects across 35 countries on the African continent in 2016.<sup>58</sup> Other research puts this figure at closer to 200 Australian companies active in Africa, plus a further 100 companies active in Asia and 100 companies active across South America.<sup>59</sup> This same research also suggested that in 2010 the dollar value of Australian exploration activities globally was exceeded by only Canada.<sup>60</sup> In the case of Australian companies in Africa, gold and coal are the two commodities of most interest.<sup>61</sup>

Information from the International Consortium of Investigative Journalists suggests that Australian mining companies are more numerous in Africa than those from other mining giants such as Canada, the United Kingdom and, interestingly, China.<sup>62</sup>

It is also difficult to get accurate data from other countries. However, data on the value of outward foreign direct investment (FDI) in the mining sector can be used as a measure of overseas mining activity. Data from the OECD<sup>63</sup> (while patchy) suggests that the value of outward FDI from OECD countries in the mining sector is highest for the United States (US), United Kingdom (UK), Australia, Canada and Japan.<sup>64</sup> This is supported by the fact that companies from Australia, Canada, the US and the UK (plus China) dominate lists of the world's largest mining companies.<sup>65</sup> Many of these top 40 companies have a global footprint.

Over the last 10 years, China has become one of the most important investors in the world. In 2015, official outbound investment flows from China reached a record high of almost USD\$146 billion, second only to the United States. One of the top targets for Chinese overseas investment is the mining industry.<sup>66</sup> While Chinese mining companies can have a reputation for particularly poor practice in the mining sector, Chinese companies are not alone. A focus on China may distract from poor practice that originates closer to home, and amongst nations that have agreed to similar standards under international frameworks.

With this in mind, ActionAid Australia's focus in this report is on OECD member countries. OECD members have committed to promoting principles and standards for responsible business conduct in a global context including those outlined in the OECD Guidelines for Multinational Enterprises. In theory, this means that OECD countries should have reasonably good regulatory and policy frameworks governing business conduct, including the conduct of their mining sectors.

As such, ActionAid Australia has undertaken research to compare Australia to Canada, Japan, the UK and the US across the five reform areas identified in the previous section.

56 UN Committee on the Elimination of Discrimination Against Women, General Comment No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW/C/2010/47/GC.2, 2010

57 Publish What You Pay Australia, Abundant resources, absent data: Measuring the openness of Australian listed mining, oil and gas companies on the African continent, 2017

58 Australia-Africa Minerals and Energy Group, Australia and Africa assessing the scale and potential of Australian engagement in Africa, 2017

59 Centre for Exploration Targeting, Sharing the benefits: enhancing Australia's global leadership in the mining value chain, 2016

60 It is assumed that this includes exploration activities undertaken in Australia and Canada and overseas.

61 Publish What You Pay Australia, Abundant resources, absent data: Measuring the openness of Australian listed mining, oil and gas companies on the African continent, 2017

62 International Consortium of Investigative Journalists, Fatal Extraction: Australian mining's damaging push into Africa, 2015 <https://www.icij.org/investigations/fatal-extraction/>

63 <http://stats.oecd.org/#>

64 The data also suggests the Netherlands is a significant sources of outward FDI although the reasons why this might be the case are not clear.

65 See for example annual reviews of the mining industry by PwC including Mine 2016: Slower, lower, weaker . . . but not defeated and Stop. Think . . . Act Mine 2017

66 Inclusive Development International, Safeguarding people and the environment in Chinese Investments: A guide for community advocates, 2017

## How Australia compares on key areas of corporate accountability

ActionAid Australia has undertaken research to compare Australia to Canada, Japan, the UK and the US on how each country regulates the overseas operations of its mining companies and on government policy relevant to the overseas operations of the mining sector. Our assessment considers the five reform areas outlined above that have been identified as priorities by women's rights organisations.

### Access to remedy

The only formal non-judicial redress mechanism available to women and their communities impacted by the overseas operation of Australian mining companies is the Australian NCP established by the OECD Guidelines for Multinational Enterprises. In 2017, the Australian Government commissioned an independent review of the Government's commitments and obligations under the OECD Guidelines for Multinational Enterprises, including evaluating the effectiveness of the current Australian NCP. The review was damning in its conclusions. The review concluded that the Australian NCP is ranked among the poorest performing NCPs internationally.<sup>67</sup> When assessed against key criteria (namely visibility, accessibility, transparency and accountability, and whether complaints are dealt with in a way that is impartial, predictable and equitable) the Australian NCP was found to be significantly lacking. The Australian NCP as it currently functions does not provide an effective remedy, has a poor record of resolving disputes and as such is only occasionally used.<sup>68</sup> The Australian Government recently published a discussion paper on improving the NCP's handling of individual complaints.<sup>69</sup> This paper does not respond to the bigger structural problems highlighted by the independent review, nor does it give explicit attention to the barriers that women face in seeking remedy through the Australian NCP. Other countries maintain better resourced and structured NCPs that can provide a model for reform of Australia's NCP.

In December 2017, the Canadian Government announced

the creation of a 'Canadian Ombudsperson for Responsible Enterprise'. The Ombudsperson will work alongside the Canadian NCP,<sup>70</sup> but its creation responds to calls that other models for non-judicial redress are needed to address poor corporate behaviour. The Ombudsperson's scope will be multi-sectoral but will initially focus on the mining, oil and gas, and garment sectors.<sup>71</sup> The Ombudsperson's mandate will be to address complaints related to allegations of human rights abuses arising from Canadian companies' activities overseas. It would focus on investigations, informal resolution of disputes, and on making public recommendations which might include recommending compensation, an apology, the cessation of particular activities, mitigation measures or corporate policy changes. It may also recommend sanctions, which include the withdrawal of certain government services, such as trade advocacy and future Export Development Canada support. The Ombudsperson would have the power to undertake collaborative and independent fact-finding and be able to compel witnesses and documents.<sup>72</sup> The Canadian NCP would continue to fulfil its mandate of dialogue, facilitation or mediation for all sectors for the wider range of issues included in the OECD Guidelines for Multinational Enterprises.

The Ombudsperson is not yet functioning but based on the available information would seem to offer much greater potential for redress – including for women impacted by Canadian mining activities – than is offered by the NCP process, at least based on past performance of most NCPs. In responding to the Canadian Government's announcement, KAIROS, the Canadian Ecumenical Justice Initiative, noted that the Government has an opportunity to entrust the Ombudsperson with the responsibility to ensure that the rights of women and girls are respected, that resource extraction does not result in increased gender-based violence, and that the unique perspective and concerns of women are taken into account when resource extraction projects are being considered.<sup>73</sup>

The Japanese Government fulfils its requirements under the OECD Guidelines for Multinational Enterprises and maintains its NCP. Unlike the Australian NCP, the Japanese NCP is an interagency NCP comprising the Ministry of Foreign Affairs, the Ministry of Health, Labour and Welfare, and the Ministry

67 Alex Newton, Independent review Australian National Contact Point under the OECD Guidelines for Multinational Enterprises, 2017

68 The findings of the independent review are consistent with the findings of research conducted by others (for example Zornada K, The Australian OECD National Contact Point: How it can be reformed in Research CA (Ed) Non-judicial Human Rights Redress Mechanisms Project 2017, Melbourne University of Melbourne)

69 <http://ausncp.gov.au/contactpoint/procedures-consultation/>

70 In its statement at the end of a visit to Canada, the United Nations Working Group on Business and Human Rights recommended that a number of steps should be taken to enhance the NCP's effectiveness in providing access to adequate remedies, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21680&LangID=E>

71 Government of Canada, The Government of Canada brings leadership to responsible business conduct abroad, 2018, [https://www.canada.ca/en/global-affairs/news/2018/01/the\\_government\\_of\\_canada\\_brings\\_leadership\\_to\\_responsible\\_business\\_conduct.html](https://www.canada.ca/en/global-affairs/news/2018/01/the_government_of_canada_brings_leadership_to_responsible_business_conduct.html)

72 Global Affairs Canada, Responsible business conduct abroad – Questions and answers, [http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/faq.aspx?lang=eng&\\_ga=2.77097437.914439324.1526341043-982224888.1519864063](http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/faq.aspx?lang=eng&_ga=2.77097437.914439324.1526341043-982224888.1519864063)

73 Canadian Network on Corporate Accountability, Op-ed: Human rights ombudsperson will bring long-awaited accountability to Canadian mining, 2018 <http://cnca-rcrce.ca/recent-works/op-ed-human-rights-ombudsperson-will-bring-long-awaited-accountability-to-canadian-mining/>

of Economy, Trade and Industry. It also has an advisory body which consists of the Japanese Business Federation, the Japanese Trade Union Confederation, and the Japanese NCP.<sup>74</sup> However, the Japanese NCP is only rarely used. In one case involving labour rights violations in the Philippines, the Japanese NCP took six years to decide on admissibility of the complaint and eleven years after the complaint was filed, the NCP has still not moved the case forward.<sup>75</sup> The ability of the Japanese NCP to provide an effective remedy must therefore be questioned.

For years, the UK NCP had a reputation as one of the best performing NCPs worldwide<sup>76</sup> and was regularly used, more so than any other NCP. However, since 2011, the UK NCP has steadily lost the confidence of at least some civil society organisations in the UK.<sup>77</sup> In part this may be due to the UK NCP struggling to cope with the volume of complaints received and to deal with the complex procedural and conceptual issues underpinning them, and a lack of capacity and relevant expertise.<sup>78</sup> Nevertheless, aspects of the UK NCP's processes are often cited as examples of good practice.<sup>79</sup>

The US NCP is, after the UK, the second most utilised NCP. Yet it too has been criticised for failing to serve as an effective tool for affected communities and civil society organisations to access remedy, with many complainants being left in the same or worse position they were in before they filed their complaint.<sup>80</sup> Additionally, the US NCP has the most restrictive confidentiality requirements meaning that communities that submit a complaint against a US company are not allowed to publish the content of the complaint or discuss it.<sup>81</sup>

## Support for a legally binding treaty on business and human rights

At the 26th session of the Human Rights Council, Japan, the UK and the US voted against the adoption of Resolution 26/9 which was designed to begin a process of "elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights".<sup>82</sup> As noted above, the vote passed and work has since commenced to develop a legally binding treaty to regulate the activities of transnational corporations and other business enterprises.

It is not clear what the Australian Government's policy position is on a binding treaty on business and human rights. Support for the development of a treaty is not an explicit priority for Australia and its membership of the Human Rights Council.<sup>83</sup> Also relevant here is that fact that in 2017 the Australian Government decided not to proceed in developing a national action plan on business and human rights<sup>84</sup> (consistent with the UN Guiding Principles on Business and Human Rights) despite establishing a multi-stakeholder advisory group that recommended unanimously that Australia do just that. Advancing the business and human rights agenda is clearly not a priority for Australia.

It is also not clear what the Canadian Government's position is on the binding treaty. Canada's absence from the treaty process has been noted by some civil society organisations.<sup>85</sup> Like Australia, Canada has not developed a national action plan on business and human rights, and has not nominated the issue of business and human rights as a priority for its human rights agenda.<sup>86</sup>

74 OECD Responsible Business Conduct, Japan – National Contact Point <http://mneguidelines.oecd.org/ncps/japan.htm>

75 [https://www.oecdwatch.org/publications-en/Publication\\_4201](https://www.oecdwatch.org/publications-en/Publication_4201)

76 OECD Watch, Restoring civil society confidence in the UK NCP, 2018 <https://www.oecdwatch.org/news-en/restoring-civil-society-confidence-in-the-uk-ncp/>

77 see for example Amnesty International, Obstacle course: How the UK's National Contact Point handles human rights complaints under the OECD Guidelines for Multinational Enterprises, 2016

78 Amnesty International, Obstacle course: How the UK's National Contact Point handles human rights complaints under the OECD Guidelines for Multinational Enterprises, 2016

79 for example, its practice of issuing initial determinations and final statements (even where the company refuses to engage with the NCP process) is considered by some to be good practice that other NCP should adopt (Alex Newton, Independent review Australian National Contact Point under the OECD Guidelines for Multinational Enterprises, 2017) as its oversight committee which is made up of interested stakeholders.

80 OECD Watch, OECD Watch submission to the 2017 peer review of the US NCP, 2017, [https://www.oecdwatch.org/publications-en/Publication\\_4377/](https://www.oecdwatch.org/publications-en/Publication_4377/)

81 Accountability Counsel, Time to unleash the power of the IS National Contact Point, 2017 <https://www.accountabilitycounsel.org/2017/09/time-to-unleash-the-power-of-the-u-s-national-contact-point/>

82 UN General Assembly, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, A/HRC/26/L.22/Rev.1, 2014

83 Department of Foreign Affairs and Trade, <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/Pages/australias-membership-unhrc-2018-2020.aspx>

84 Letter to the Australian Ambassador at the UN Office in Geneva from the Chair of the UN Working Group on Business and Human Rights, 2017 <https://www.business-humanrights.org/sites/default/files/documents/UNWGLetterAustralia.pdf>

85 Treaty Alliance, IGWG Day 2 Summary, 2016, <http://www.treatymovement.com/news/6a495c88-cdc9-40b4-9b56-62a2561f55c8>

86 Government of Canada, [http://international.gc.ca/world-monde/issues\\_developpement-enjeux\\_developpement/human\\_rights-droits\\_homme/advancing\\_rights-promouvoir\\_droits.aspx?lang=eng](http://international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/advancing_rights-promouvoir_droits.aspx?lang=eng)

## Human rights due diligence

In May 2018, the Australian Government announced its intention to introduce legislation to the parliament to enact a Modern Slavery Act.<sup>87</sup> The Act would oblige large Australian companies, including large mining companies, to report on their structure, operations and supply chains, both in Australia and overseas; potential modern slavery risks; actions taken to address these risks; and how they assess the effectiveness of their actions. While the Act would appear to primarily place reporting obligations, rather than human rights due diligence obligations, on companies, it may be the first step in familiarising Australian businesses with human rights due diligence processes. The Act focuses on a subset of human rights, namely modern slavery practices that are already criminalised under Commonwealth law, including slavery, trafficking in persons, servitude, forced labour and forced marriage.<sup>88</sup> Most of the human rights violations experienced by women because of the practices of Australian mining companies would not be covered by the proposed legislation. Nevertheless, the proposed Modern Slavery Act represents the first attempt by the Australian Government to legally require some form of human rights reporting (and by extension human rights due diligence) by Australian businesses. It potentially extends the reach of existing due diligence requirements on Australian business which to date has been restricted to illegal logging.<sup>89</sup>

The Canadian and Japanese Governments do not place any obligations on their companies to conduct human rights due diligence or related reporting obligations.

The UK's Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016 requires large companies to report on its respect for human rights (among other issues), relevant policies and due diligence processes, risks and potential adverse impacts of these risks, and how these risks are managed.<sup>90</sup> These regulations implement the EU Directive on non-financial and diversity information. The UK's *Modern Slavery Act 2015* requires companies with an annual global turnover of more than £36 million to report on what steps they have taken to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business. The report must include information about its due diligence processes and the steps it

has taken to assess and manage that risk.<sup>91</sup>

Like the proposed Australian legislation the UK *Modern Slavery Act* only covers a subset of human rights and is unlikely to address most human rights impacts relevant to the activities of UK mining companies. One review of reports submitted in accordance with the Act found that reporting on due diligence was limited, with many companies indicating continued heavy reliance on audits (usually carried out by a third party, or even by the supplier itself) and certification schemes.<sup>92</sup> The review noted that while there is a place for these approaches, they cannot substitute for comprehensive due diligence, undertaken in the spirit of identifying human rights risks based on engagement with workers and producers. It would appear that the UK's *Modern Slavery Act* has not yet led to significant change in how businesses exercise their human rights due diligence obligations but nevertheless is an important legislative initiative.

In the US, the state of California's *Transparency in Supply Chains Act* places reporting obligations on large companies with regards to human trafficking and slavery.<sup>93</sup> Like the UK legislation and proposed legislation in Australia, the Californian legislation is narrow in scope with little, if any, implications for mining activity.

## Revenue transparency

The Australian Government does not require Australia mining (or oil and gas) companies to disclose what payments they make to overseas governments. The Australian Labor Party has though committed to introducing a mandatory reporting regime if it wins the next election. Mandatory reporting would require large Australian mining, oil and gas companies to report payments made to governments on a country-by-country and project-by-project basis, provided certain threshold criteria are met.<sup>94</sup> The Canadian legislation (discussed below) requires all publicly listed companies (not just large ones) to report and is therefore a stronger scheme than that proposed by the Australian Labor Party.

Japan does not require Japanese mining companies to disclose what payments they make to overseas governments.

87 The Hon Alex Hawke, Assistant Minister for Home Affairs, Government strengthens Australia's response to modern slavery, 2018 <http://minister.homeaffairs.gov.au/alexhawke/Pages/modern-slavery.aspx>

88 Australian Government, Department of Home Affairs, Fact Sheet: Modern Slavery Reporting Requirement, <https://www.homeaffairs.gov.au/consultations/Documents/modern-slavery/modern-slavery-reporting-requirement.pdf>

89 The Illegal Logging Prohibition Regulation 2012 sets out the steps that must be undertaken to conduct due diligence on regulated timber products (<http://www.agriculture.gov.au/forestry/policies/illegal-logging/information-importers>)

90 UK The Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016

91 UK Modern Slavery Act 2015,

92 CORE, Risk adverse? Company reporting on raw material and sector-specific risks under the Transparency in Supply Chains clause in the UK Modern Slavery Act 2015, 017

93 State of California, Department of Justice, Senate Bill No. 657, Chapter 556

94 The Guardian, Labor plans to force Australian mining companies to disclose taxes paid overseas, 2017, <https://www.theguardian.com/australia-news/2017/oct/31/labor-plans-to-force-australian-mining-companies-to-disclose-taxes-paid-overseas>

The Canadian *Extractive Sector Transparency Measures Act* (ESTMA) came into force in 2015. This requires mandatory reporting of payments by Canadian mining, oil and gas companies that operate in commercial production in the extractives sector to government-related entities in both Canada and overseas. The mandatory reporting requirements apply to Canadian companies listed on a Canadian stock exchange and private companies that meet certain threshold, and apply when total payments exceed CAD\$100,000 in a financial year. Reporting is on a country-by-country and project-by-project basis.

Information on payments must be reported for the following categories:<sup>95</sup>

- Taxes (other than consumption and personal income)
- Royalties
- Fees (including rental fees, entry fees and regulatory charges, as well as fees for licences, permits or concessions)
- Production entitlements
- Bonuses (including signature, discovery and production bonuses)
- Dividends (other than dividends paid to payees as ordinary shareholders)
- Infrastructure improvement payments

The UK's *Reports on Payments to Governments Regulations* came into force in 2015. The regulations implement the 2013 European Union's *Accounting and Transparency Directives* and require UK listed and large unlisted oil, gas and mining companies to report for each project their payments to governments in all countries where they operate.

Payments over £86,000 must be reported for the following categories:<sup>96</sup>

- Production entitlements
- Taxes levied on the income, production or profits of companies
- Royalties

- Dividends (if dividends paid to a government in lieu of production entitlements or royalties)  
Signature, discovery and production bonuses
- Fees
- Infrastructure improvement payments

It is also worth noting that the UK parliament recently voted to require UK overseas territories (such as the Cayman Islands) to publish public registers of company ownership by the end of 2020.<sup>97</sup> Beneficial ownership disclosure is key to improving governance and tackling tax avoidance and corruption in the extractives sector.

In February 2017, the US Congress passed a resolution that vacated the Cardin-Lugar rule, also known as Section 1504 of the *Dodd-Frank Act*.<sup>98</sup> This rule required US-listed mining, oil and gas companies to publish project-level payments, such as taxes and royalties, to US and overseas governments. The US was the first country (in 2010) to legislate for mandatory disclosure by the extractives sector.

## Government financing of fossil fuel projects

Between 2013 and 2016, Japan provided on average a staggering USD\$16.5 billion each year in public finance for fossil fuel projects.<sup>99</sup> During the same period, the US provided USD\$6 billion annually, Canada USD\$3 billion annually<sup>100</sup> and the UK USD\$1 billion annually for fossil fuel projects. In May 2018, the Canadian Government announced that it would nationalise the Kinder Morgan oil pipeline at an estimated cost of USD\$4.5 billion.<sup>101</sup> By way of comparison, during this same period the total amount of public finance provided for clean energy was USD\$524 million for Australia, USD\$171 million for Canada, USD\$2,657 million for Japan, USD\$172 million for the UK and USD\$1,271 million for the US.<sup>102</sup> Compared to the other countries, Australia has a reasonable record here.

The bulk of this finance was provided by export credit agencies (ECA). ECAs are public agencies that provide government-backed loans, guarantees, credits and insurance

95 Natural Resources Canada, Information on the ESTMA, <https://www.nrcan.gc.ca/mining-materials/estma/18184>

96 UK Reports on Payments to Governments Regulations 2014 <http://www.legislation.gov.uk/uksi/2014/3209/regulation/9/made>

97 Extractive Industries Transparency Initiative, UK's overseas territories to have beneficial ownership registers, 2018, <https://eiti.org/news/uks-overseas-territories-to-have-beneficial-ownership-registers>

98 Publish What You Pay US, News: Gutless Congress votes yes to corruption, 2017 <http://www.pwypusa.org/pwyp-news/gutless-congress-votes-yes-to-corruption-february-3-2017/>

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to businesses from their home country to support exports or other business activities overseas. OECD ECAs have agreed to restrict financing for certain coal-fired power plants.<sup>103</sup> However, the OECD coal financing restrictions still allow support for coal projects in the world's poorest countries and for slightly more efficient coal plants. The OECD has placed no limits on oil and gas financing, and support for oil and gas projects far exceeds financing for coal projects.<sup>104</sup> Japan's ECA provided approximately USD\$12.5 billion annually during 2013 and 2015 in support of fossil fuel projects.<sup>105</sup> During this same period, Australia's ECA (the Export Finance and Insurance Corporation, Efic) provided an average of AUD\$170 million annually,<sup>106</sup> a small amount in comparison with Japan, Canada, the UK and US. However, in 2009 Efic lent AUD\$500 million to Exxon Mobil, OilSearch, Santos and the Government of Papua New Guinea (PNG) in support of the PNG LNG project, a large natural gas project in PNG. The Australian Trade Minister – who is able to direct Efic's mandate – has more recently considered whether or not Efic could support the large Adani coal mine in central Queensland.<sup>107</sup>

It is worth also noting that the Australian Government established the Northern Australia Infrastructure Facility (NAIF) in 2016 – a \$5 billion fund for concessional financing for infrastructure in northern Australia. In December 2016, there was national coverage of a proposed \$1 billion NAIF loan to the Adani Group to construct the North Galilee Basin Rail Project, which would be used to export coal from the company's proposed Carmichael mine. At the time, Minister Matthew Canavan and Deputy Prime Minister Barnaby Joyce voiced support for the proposal.<sup>108</sup> Although this proposal was for a project in Australia rather than overseas, and has since been withdrawn, it illustrates current Government support for creating significant new sources of government-backed financing for coal and other mining-related projects.

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107 ABC, Adani: Finance agency talks suggest door not shut on taxpayer funding, 2018 <http://www.abc.net.au/news/2018-01-20/adani-finance-agency-talks-suggest-door-not-shut-taxpayer-funds/9344886>

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## The scorecard

This scorecard provides a summary of ActionAid Australia's assessment of the policy and regulation of the overseas operations of mining companies by the governments of Australia, Japan, Canada, the UK and the US, based on the priorities of women's rights organisations.

In making this assessment we have considered how the relevant legislation or policy addresses the demands for reform made by women's rights organisations. For example, while the UK has, and Australia is proposing, legislation that places reporting requirements on businesses in regards to modern slavery (including on human rights due diligence processes) the legislation does not place obligations on

mining companies for all human rights not explicitly covered under the definition of 'modern slavery' but which are potentially undermined by their business practices. Further the legislation does not require gender-sensitive human rights due diligence. As such Australia and the UK receive the same assessment as Canada and Japan where there is no relevant legislation at all. Further, where a country once had strong legislative requirements directed at the mining sector but no longer does (such as the US that repealed its mandatory reporting requirements) that country has been judged more harshly than others that have never had such requirements because of the effect such regressive action may have on global efforts to strengthen corporate accountability.

**√√ = Leading regulatory or policy action**

**√ = Notable regulatory or policy action**

**X = Weak (or no) regulatory or policy action**

**XX = Regulatory or policy action that is obstructive**

**XXX = Regulatory or policy action that is particularly egregious**

	Access to remedy	Support for binding treaty	Human rights due diligence	Revenue transparency	Financing of fossil fuel projects
<b>Australia</b>	X	X	X	X	XX
<b>Canada</b>	√√	X	X	√√	XXX
<b>Japan</b>	X	XX	X	X	XXX
<b>UK</b>	√	XX	X	√√	XX
<b>US</b>	X	XX	X	XX	XX

# Conclusion and recommendations

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Women's rights organisations have a vision for reform of the mining sector. They are calling for better access to remedy for those women whose rights have been violated by the operations of mining companies; support for the development of an international legally binding treaty on business and human rights; the development of legal obligations requiring mining companies to conduct human rights due diligence; better access to information on the payments made to host governments by mining companies; and the end to government funding of fossil fuel projects. Based on our assessment, the Australian Government has failed to implement adequate policy and regulation in each of these five areas.

In summary, the assessment has found that the Canadian Government is leading the way on remedy for human rights abuses with the recent announcement that it will establish a Canadian Ombudsperson for Responsible Enterprise. The Ombudsperson has the potential to provide effective remedy for women and their communities when impacted by the overseas operations of Canadian mining companies. Evidence from Canada, Australia, Japan, the UK and the US shows that the NCP system rarely provides affected communities with an effective remedy – in fact remedy remains rare across all OECD countries.<sup>109</sup>

Canada also has mandatory disclosure legislation that requires Canadian mining companies to disclose payments made to the governments of the countries where they operate. The UK has similar mandatory disclosure legislation and an NCP that, at least until recently, has been well regarded and able to provide some form of effective redress for people affected by the overseas operations of UK businesses. Australia on the other hand has a poorly performing NCP and no alternative form of redress, and does not require Australian mining companies to disclose payments made to the governments of the countries where they operate.

Australia (through Australia's ECA), along with Canada, Japan, the UK and the US, provides some financing for fossil fuel projects although not nearly as much as the other countries – Japanese and Canadian support for the fossil fuel sector is particularly high. However, recent developments suggest the Australian Government is supportive of developing new Government-backed financing opportunities for fossil fuel projects, although to date this has only included projects operating in Australia. Finally, Australia is not an

active supporter of the development of a UN treaty on business and human rights and does not require human rights diligence of its mining companies.

Based on our findings ActionAid Australia recommends that the Australian Government:

- 1. Provide better access to remedy for women and their communities impacted by the operation of Australian mining companies overseas through the establishment of a function similar to the proposed Canadian Ombudsperson for Responsible Enterprise. This function should address the specific barriers that women face accessing remedy, and have the power to investigate both the systemic impacts of mining on women's rights and individual cases of abuse.**
- 2. Support the development of an international legally binding treaty on business and human rights, and actively engage in the treaty development process including to ensure that a future treaty addresses the specific impact of corporate violations on women.**
- 3. Develop legislation that requires Australian mining companies operating overseas to conduct human rights due diligence. Due diligence should be gender sensitive and aimed at preventing adverse human rights impacts on women and their communities.**
- 4. Develop legislation that requires Australian mining companies to report, on a project-by-project and country-by-country basis, the payments made to the governments of the countries where they operate, consistent with Canadian and UK requirements.**
- 5. Cease public funding for fossil fuel projects, including the alteration of Efic's mandate to explicitly prohibit support for fossil fuel projects, consistent with government commitments to limit global warming to no more than 1.5°C as agreed under the Paris climate agreement.**

<sup>109</sup> OECD Watch, Remedy Remains Rare, 2015 and OECD Watch, The State of Remedy under the OECD Guidelines Understanding NCP cases concluded in 2017 through the lens of remedy, 2018